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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/498,271 | 02/04/2000 | J. David Schaffer | US000018 | 8578 |

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EXAMINER

SHELTON, BRIAN K

ART UNIT PAPER NUMBER

2611

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/498,271

Applicant(s)

SCHAFFER, J. DAVID

Examiner

Brian Shelton

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/18/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7,8,10-25,31-48,51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,8,10-22,24,25,31-45,47,48,51 and 52 is/are allowed.
- 6) ☒ Claim(s) 23 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed June 18, 2004.

Allowable Subject Matter

2. Claims 7-8, 10-22, 24-25, 31-45, 47-48 are allowed as a result of Applicant's amendment to incorporate subject matter indicated as allowable in the First Office Action, dated April 8, 2004, to overcome the prior rejections.
3. Claims 51 and 52 are allowed, as indicated in the First Office Action.
4. The indicated allowability of claims 23 and 46 is withdrawn in view of the newly discovered reference(s) to Maissel et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 23 and 46** are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (Herz), U.S. Patent No. 5,758,257 in view of Maissel et al. (Maissel), U.S. Patent No. 6,637,029.

Regarding **claims 23 and 46**, Herz discloses *a data processing device* (Fig. 10; set top multimedia terminal **620**) *and a corresponding medium readable by a data processing device embodying software* (Fig. 9, disclosing software diagram), comprising:

- (a) *At least one input* (Infrared receiver **1010** [customer input; see col. 46, lines 44-47] and Tuner **1002** [content profiles from headed **502**; see col. 46, lines 25-30]) *for receiving data including:*
 - (i) *viewer profile data* (col. 46, lines 47-50 [customer profile data/customer viewing habits stored in memory **1012**]; and
 - (ii) *data regarding a television program* (Video programming content profiles received at data receiver **1004**; col. 46, lines 27-28); *and*
- (b) *a processor* (microprocessor **1006**), *the processor being adapted to perform the following:*
 - (i) *Calculating a probability that the television program is a desired one* (col. 46, lines 43-45, disclosing calculation of agreement matrix by hardware embodiment; see col. 19, line 5 – col. 20, line 48 [disclosing method of agreement matrix calculation]); *and*
 - (ii) *supplying a recommendation based on the probability* (col. 46, lines 50-61).

Herz fails to disclose the processor being further adapted to occasionally recommend a surprise show that has relatively few features in common with watched shows, as claimed.

However, Maissel, in an analogous art, teaches program recommendation wherein the processor recommends randomized program selections (i.e., surprise programs) in response to determining that the viewer prefers to "surf", wherein randomly selecting programming for recommendation necessarily involves occasionally recommending programming with "relatively few features in common with watched shows" (col. 17, lines 17-50) for the benefit of providing enhanced functionality in a program recommendation system to account for user programming selections that indicate a random selection pattern (see col. 17, lines 45-50).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the program recommendation of Herz to incorporate wherein the processor is further adapted to occasionally recommend a surprise show that has relatively few features in common with watched shows, as taught by Maissel, for the benefit of providing enhanced functionality in a program recommendation system to account for user programming selections that indicate a random selection pattern.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bieganski et al., U.S. Patent No. 6,412,012 discloses a system for generating compatibility-aware recommendations wherein compatible item recommendations are provided in response to user preference data and item compatibility rules (abstract, col. 3, line 35 – col. 4, line 8, col. 7, line 10 – col. 10, line 49, col. 17, line 37 – col. 20, line 7).

Yaeger, U.S. Patent No. 5,768,422 discloses an adaptive statistical classifier used for pattern recognition in a neural network which is trained to discriminate against improper patterns in training samples, wherein the classifier employs a probability factor which limits the frequency with which negative samples are utilized during training (abstract, col. 9, line 36 – col. 10, line 52; col. 12, line 25 – col. 13, line 61).

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Shelton whose telephone number is (703) 305-8714. The examiner can normally be reached on Monday-Friday, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (703) 305-4755. The fax phone


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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian Shelton
Examiner
Art Unit 2611

BS


CHRIS GRANT
PRIMARY EXAMINER